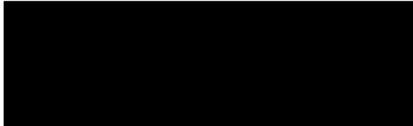


Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2305317
Decision Date:	9/14/2023	Hearing Date:	8/2/2023
Hearing Officer:	Cynthia Kopka		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Raisa Guzman, MEC – Charlestown
Karishma Raja, Premium Billing



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Eligibility, under 65 years, CommonHealth premium
Decision Date:	09/14/2023	Hearing Date:	8/2/2023
MassHealth's Rep.:	Raisa Guzman and Karishma Raja	Appellant's Rep.:	Pro se
Hearing Location:	Charlestown (remote)	Aid Pending:	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

By notice dated June 9, 2023, MassHealth notified Appellant that she was approved for MassHealth CommonHealth with a monthly premium of \$476.00. Exhibit 1. Appellant filed this timely appeal on June 26, 2023. Exhibit 2. 130 CMR 610.015(B). Challenging the scope of assistance is a valid basis for appeal. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth notified Appellant that she was approved for MassHealth CommonHealth with a monthly premium of \$476.00.

Issue

The appeal issue is whether MassHealth was correct in determining that Appellant owes a premium of \$476.00 per month.

Summary of Evidence

MassHealth was represented at hearing by phone by an eligibility representative and a Premium Billing representative. Appellant appeared by phone. A summary follows.

Between December 1, 1992 and February 26, 2019, Appellant received MassHealth Standard coverage. On March 5, 2019, Appellant was downgraded to partial health safety net, an emergency coverage type. The partial health safety net was in place through June 14, 2023. Additionally, on August 10, 2019, Appellant was determined eligible for MassHealth CommonHealth with a premium. CommonHealth is a coverage type available to members with disabilities at any income level, though members with higher incomes may be assessed a monthly premium. Though the eligibility representative testified that Appellant was not assessed a premium, the Premium Billing representative testified that a premium was assessed, but it was reduced during the Covid-19 public health emergency. In any event, upon the public health emergency ending, MassHealth began redetermining eligibility for all members.¹

On June 9, 2023, MassHealth determined that Appellant was eligible for MassHealth CommonHealth's benefit with a monthly premium of \$467. Exhibit 1. This was based on Appellant's projected monthly income of \$8,126.25 for a household of one, calculated to be 663.83% of the federal poverty level (FPL). The premium would be due beginning in July 2023. *Id.* The eligibility representative testified that the income is approximately \$95,000 per year.

Appellant did not dispute the income as provided by MassHealth. Appellant argued that MassHealth is not considering her disability when making the determination that she owes a premium. Appellant argued that it is not fair that other, more "popular" disabilities like cancer, HIV, and autoimmune diseases have exceptions that allow members to not have to pay a premium. Appellant never had to pay a premium for 20 years of coverage. Appellant's disability, [REDACTED], can cause her income to fluctuate. Appellant argued that the eligibility rules change without her having any say in the matter. Appellant's disability is not changing, rather is getting worse, but her coverage is fluctuating.

Findings of Fact

¹ Appellant filed an appeal on a prior notice dated April 14, 2023 which changed Appellant's premium to \$184 per month (Appeal No. 2303413). A hearing was held on this appeal on June 9, 2023. Appellant withdrew this appeal to submit updated information for redetermination.

Based on a preponderance of the evidence, I find the following:

1. Appellant is in a household of one with projected monthly income of \$8,126.25.
2. Appellant is under the age of 64 and is a disabled adult.
3. In 2023, the monthly FPL for a household of one was \$1,215; 133% of the FPL was \$1,616; and 150% of the FPL was \$1,823.
4. On June 9, 2023, MassHealth determined that Appellant was eligible for MassHealth CommonHealth with a monthly premium of \$476.00. Exhibit 1.
5. Appellant filed this timely appeal on June 26, 2023. Exhibit 2.

Analysis and Conclusions of Law

MassHealth regulations at 130 CMR 505.000 *et seq.* explain the categorical requirements and financial standards that must be met to qualify for a MassHealth coverage type. The rules of financial responsibility and calculation of financial eligibility are detailed in 130 CMR 506.000: *Health Care Reform: MassHealth: Financial Requirements*. The MassHealth coverage types are:

- (1) MassHealth Standard – for people who are pregnant, children, parents and caretaker relatives, young adults, disabled individuals, certain persons who are HIV positive, individuals with breast or cervical cancer, independent foster care adolescents, Department of Mental Health (DMH) members, and medically frail as such term is defined in 130 CMR 505.008(F);
- (2) MassHealth CommonHealth – for disabled adults, disabled young adults, and disabled children who are not eligible for MassHealth Standard;
- (3) MassHealth CarePlus – for adults 21 through 64 years of age who are not eligible for MassHealth Standard;
- (4) MassHealth Family Assistance – for children, young adults, certain noncitizens, and persons who are HIV positive who are not eligible for MassHealth Standard, MassHealth CommonHealth, or MassHealth CarePlus;
- (5) MassHealth Limited – for certain lawfully present immigrants as described in 130 CMR 504.003(A): *Lawfully Present Immigrants*, nonqualified PRUCOLs, and other noncitizens as described in 130 CMR 504.003: *Immigrants*; and
- (6) MassHealth Medicare Savings Programs – for certain Medicare beneficiaries.

130 CMR 505.001(A).

In order to establish eligibility for MassHealth benefits, applicants must meet both the categorical

and financial requirements. MassHealth determines financial eligibility based on an applicant's modified adjusted gross income. MassHealth takes the countable income, which includes earned income as described in 130 CMR 506.003(A) and unearned income described in 130 CMR 506.003(B) and subtracts deductions described in 130 CMR 506.003(D). 130 CMR 506.007. Per 130 CMR 506.003, the regulatory definitions of earned income, unearned income and deductions are as follows:

(A) Earned Income.

(1) Earned income is the total amount of taxable compensation received for work or services performed less pretax deductions. Earned income may include wages, salaries, tips, commissions, and bonuses.

(2) Earned taxable income for the self-employed is the total amount of taxable annual income from self-employment after deducting annual business expenses listed or allowable on a U.S. Individual Tax Return. Self-employment income may be a profit or a loss.

(3) Earned income from S-Corporations or Partnerships is the total amount of taxable annual profit (or loss) after deducting business expenses listed or allowable on a U.S. Individual Tax Return.

(4) Seasonal income or other reasonably predictable future income is taxable income derived from an income source that may fluctuate during the year. Annual gross taxable income is divided by 12 to obtain a monthly taxable gross income with the following exception: if the applicant or member has a disabling illness or accident during or after the seasonal employment or other reasonably predictable future income period that prevents the person's continued or future employment, only current taxable income will be considered in the eligibility determination.

(B) Unearned Income.

(1) Unearned income is the total amount of taxable income that does not directly result from the individual's own labor after allowable deductions on the U.S Individual Tax Return.

(2) Unearned income may include, but is not limited to, social security benefits, railroad retirement benefits, pensions, annuities, certain trusts, interest and dividend income, state or local tax refund for a tax you deducted in the previous year, and gross gambling income.

(C) Rental Income. Rental income is the total amount of taxable income less any deductions listed or allowable on an applicant's or member's U.S. Individual Tax Return.

(D) Deductions. Under federal law, the following deductions are allowed when calculating MAGI countable income. Changes to federal law may impact the

availability of these deductions:

- (1) educator expenses;
- (2) reservist/performance artist/fee-based government official expenses;
- (3) health savings account;
- (4) moving expenses, for the amount and populations allowed under federal law;
- (5) one-half self-employment tax;
- (6) self-employment retirement account;
- (7) penalty on early withdrawal of savings;
- (8) alimony paid to a former spouse for individuals with alimony agreements finalized on or before December 31, 2018. Alimony payments under separation or divorce agreements finalized after December 31, 2018, or pre-existing agreements modified after December 31, 2018, are not deductible;
- (9) individual retirement account (IRA);
- (10) student loan interest;
- (11) scholarships, awards, or fellowships used solely for educational purposes; and
- (12) other deductions described in the Tax Cut and Jobs Act of 2017, Public Law 115-97 for as long as those deductions are in effect under federal law.

To be eligible for MassHealth Standard as a disabled adult, Appellant's monthly income would have to be less than or equal to 133% of the FPL. 130 CMR 505.002(E)(1)(b). The undisputed evidence in the record demonstrates that Appellant's household gross monthly income totaled \$8,126.25. MassHealth had determined that Appellant's monthly income was 663.83% of the FPL.² Accordingly, Appellant's household income is too high to be eligible for MassHealth Standard.

The eligibility requirements for MassHealth CommonHealth are set forth in pertinent part:

(B) Disabled Working Adults. Disabled working adults must meet the following requirements:

- (1) be 21 through 64 years of age (For those 65 years of age and older, see 130 CMR 519.012: *MassHealth CommonHealth*);
- (2) be employed at least 40 hours per month, or if employed less than 40 hours per month, have been employed at least 240 hours in the six-month period immediately preceding the month of receipt of the application or MassHealth's eligibility review;
- (3) be permanently and totally disabled (except for engagement in substantial gainful activity) as defined in 130 CMR 501.001: *Definition of Terms*;

² The calculation made at hearing would actually put Appellant at 668.83% of the FPL but this hearing decision will not alter MassHealth's more favorable calculation.

- (4) be a citizen as described in 130 CMR 504.002: *U.S. Citizens* or a qualified noncitizen as described in 130 CMR 504.003(A)(1): *Qualified Noncitizens*;
- (5) be ineligible for MassHealth Standard; and
- (6) comply with 130 CMR 505.004(J).

- (C) Disabled Adults. Disabled adults must meet the following requirements:
- (1) be 21 through 64 years of age;
 - (2) be permanently and totally disabled, as defined in 130 CMR 501.001: *Definition of Terms*;
 - (3) be ineligible for MassHealth Standard;
 - (4) be a citizen as described in 130 CMR 504.002: *U.S. Citizens* or a qualified noncitizen as described in 130 CMR 504.003(A)(1): *Qualified Noncitizens*;
 - (5) (a) meet a one-time-only deductible in accordance with 130 CMR 506.009: *The One-Time Deductible*; or
(b) have modified adjusted gross income of the MassHealth Disabled Adult household that is less than or equal to 200% of the federal poverty level (FPL) and provide verification that they are HIV positive; and
 - (6) comply with 130 CMR 505.004(J).

...

(I) MassHealth CommonHealth Premium. Disabled adults, disabled working adults, disabled young adults, and disabled children who meet the requirements of 130 CMR 505.004 may be assessed a premium in accordance with the premium schedule provided in 130 CMR 506.011(B)(2). No premium is assessed during a deductible period.

(J) Use of Potential Health Insurance Benefits. Applicants and members must use potential health insurance benefits, in accordance with 130 CMR 503.007: *Potential Sources of Health Care*, and must enroll in health insurance, including Medicare, if available at no greater cost to the applicant or member than he or she would pay without access to health insurance, or if purchased by the MassHealth agency in accordance with 130 CMR 505.002(O) and 506.012: *Premium Assistance Payments*. Members must access those other health insurance benefits and must show their private health insurance card and their MassHealth card to providers at the time services are provided.

130 CMR 505.004 (emphasis added). Here, Appellant is categorically eligible for CommonHealth as a disabled working adult pursuant to 130 CMR 505.004(B). According to 130 CMR 505.004(I),

adults eligible for CommonHealth may be assessed a premium in accordance with the premium schedule provided in 130 CMR 506.011(B)(2). For adults above 150% of the FPL, MassHealth uses the following formula:

CommonHealth Full Premium Formula Young Adults and Adults above 150% of the FPL and Children above 300% of the FPL		
Base Premium	Additional Premium Cost	Range of Monthly Premium Cost
Above 150% FPL—start at \$15	Add \$5 for each additional 10% FPL until 200% FPL	\$15 — \$35
Above 200% FPL—start at \$40	Add \$8 for each additional 10% FPL until 400% FPL	\$40 — \$192
Above 400% FPL—start at \$202	Add \$10 for each additional 10% FPL until 600% FPL	\$202 — \$392
Above 600% FPL—start at \$404	Add \$12 for each additional 10% FPL until 800% FPL	\$404 — \$632
Above 800% FPL—start at \$646	Add \$14 for each additional 10% FPL until 1000%	\$646 — \$912
Above 1000% FPL—start at \$928	Add \$16 for each additional 10% FPL	\$928 + greater

130 CMR 506.011(B)(2)(b). According to this chart, at 663% of the FPL, Appellant’s full CommonHealth premium would be \$476 per month.³ Appellant does not have other insurance coverage and therefore would not be entitled to a supplemental premium pursuant to 130 CMR 506.011(B)(2)(c).

Appellant did not dispute how MassHealth calculated her income or the monthly premium. Rather, Appellant argued that it is unjust that some disabilities, such as HIV or cancer, are carved out as exceptions or as separate eligibility categories in the regulations, while her disability is unaddressed. *See, e.g.*, 130 CMR 505.001(A), 505.004(C)(5)(b). The regulations do not permit a hearing decision to rule on the legality of federal or state law, including MassHealth’s regulations. 130 CMR 610.082(C). Such a challenge to the legality of this regulation (exempting certain conditions) must be subject to judicial review in accordance with 130 CMR 610.092.

This appeal is denied.

³ Again, this hearing decision will not alter the more favorable calculation of \$467.

Order for MassHealth

None.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Nga Tran, Charlestown MassHealth Enrollment Center, 529 Main Street, Suite 1M, Charlestown, MA 02129

Premium Billing: Gretchen Whitworth